

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 17-08 (March 3, 2017)

On January 4, 2017, Parent filed a complaint with the Delaware Department of Education (“DDOE”). The complaint alleges the (“School”) violated state and federal regulations concerning the provision of a free, appropriate public education (“FAPE”) to Student. The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the DDOE’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included a review of Student’s educational records, staff correspondence, and documentation provided by Parent. Interviews were conducted with Parent and School staff.

COMPLAINT ALLEGATIONS

The complaint alleges the School violated the Individuals with Disabilities Education Act (“IDEA”) and implementing regulations by failing to provide Student with related services, specifically speech and language therapy services, during the 2016 – 2017 school year as required by Student’s Individualized Education Program (“IEP”).

FINDINGS OF FACT

1. Student is xx years of age and currently enrolled in the xx grade. Student has been identified as a student with a disability under the classification of “Autism” as defined in 14 DE Admin Code § 925.6.6. Student receives special education and related services at the School pursuant to the IDEA and 14 Del. C. § 3101 *et seq.* Student also has a secondary classification of “Learning Disability” as defined in 14 DE Admin Code § 925.6.11 and a medical diagnosis of Attention Deficit Hyperactivity Disorder.

Relevant Facts from the 2015 - 2016 School Year

2. On December 8, 2015, an Invitation to Meeting letter was sent to Parent informing Parent an IEP Team meeting was scheduled for February 4, 2016 to determine Student’s continued eligibility for special education and related services, to conduct an annual review of Student’s IEP, and to develop Student’s IEP.
3. Student’s current IEP was developed at an IEP Team meeting held on February 4, 2016. The IEP Team determined Student requires speech and language therapy services in order to receive FAPE.

4. The School issued a Prior Written Notice (“PWN”) dated February 4, 2016 proposing Student would continue to receive speech and language services 42 times per year for 30 minute sessions and 8 times per year for 15 minute sessions.
5. The PWN detailed that Student continues to qualify as a student with a speech-language impairment in the areas of auditory comprehension, memory, pragmatics, following directions, and reduced speech intelligibility secondary to a fast rate of talking and decreased pronunciation of sounds.
6. The IEP dated February 4, 2016 contains an annual goal for auditory comprehension and pragmatics. This goal is to be addressed in a group therapy session 21 times per year for 30 minutes and consultative in the general education setting 4 times per year for 15 minute sessions.
7. The IEP dated February 4, 2016 contains a second annual goal for receptive language and language memory. This goal is to be addressed in a group session 21 times per year for 30 minutes and consultative in the special education setting 4 times per year for 15 minute sessions.
8. The related services page of the IEP states speech and language therapy services would be provided to Student in a group 42 times per year for 30 minutes and consultative 8 times per year for 15 minutes.
9. Student received speech and language services from Therapist #1 from February 5, 2016 through the end of the school year in June 2016.¹
10. Student’s June 3, 2016 IEP Progress Report indicates Student was making satisfactory progress toward IEP goals of auditory comprehension, and receptive language and language memory.
11. During the investigation, Therapist #1 explained that the American Speech and Hearing Association’s (ASHA) 3:1 Service Delivery Model is used by the School. This model provides three weeks of direct intervention followed by one week of indirect services.
12. Parent confirmed during the investigation that Parent does not dispute the provision of speech and language therapy services provided to Student during the 2015 - 2016 school year. Rather, Parent alleges the services were not provided to Student in the manner required by Student’s IEP in the 2016 – 2017 school year.

¹ Pursuant to 14 Del. C. § 1703, Student is eligible for a twelve month program due to Student’s disability classification of “Autism” and Student’s special education program would extend into July and August. However, Student did not participate in the twelve month program option for the 2015 – 2016 school year. Rather, Parent ensured Student received speech services privately at Hospital over the summer of 2016 which Parent continued during the 2016 - 2017 school year because the School’s speech and language services were inconsistent.

Relevant Facts from the 2016 – 2017 School Year

13. The first day for the 2016 – 2017 school year was August 25, 2016.
14. During the investigation, Parent reported his/her expectation that Student was to receive speech and language therapy services on Mondays and Wednesdays for 30 minutes each day during the 2016 - 2017 school year. By the middle of September 2016, Parent had not received a start date for speech and language therapy from the School. Parent frequently asked Student if Student had started speech therapy sessions, and Student said services had not yet begun.
15. In September 2016, the School contracted with Therapist #2 to provide speech and language therapy services to students. Therapist #2 replaced Therapist #1.
16. On October 13, 2016, Parent sent Student's teacher an E-mail requesting the start date for Student's speech and language therapy. Student's teacher reported he/she spoke with Therapist #2 and informed Parent that speech therapy would be provided to Student twice a week.
17. The response from Student's teacher did not fully address Parent's questions. Parent was not certain if therapy sessions were occurring as reported. Parent went to the School to speak with Therapist #2 to ask what days of the week speech and language therapy would be provided to Student.
18. Therapist #2 contacted Parent by phone and informed Parent speech and language therapy would be provided to Student on Tuesdays and Thursdays.
19. Student's November 16, 2016 IEP progress report describes Student was making satisfactory progress toward IEP goals in auditory comprehension, and receptive language and language memory.
20. Yet, Parent remained concerned Student was not receiving speech and language therapy as required by his IEP. In November 2016, Parent relayed his/her concerns to the Educational Diagnostician ("ED") that speech and language therapy was being delivered inconsistently to Student. Parent relied on Student's report that therapy services were not provided on a regular basis.
21. After Parent relayed his/her concerns, the ED conferred with Therapist #2. On December 2, 2016, the ED then contacted Parent by phone to share a schedule that would make up the speech therapy sessions that Parent reported as missed since the beginning of the 2016 - 2017 school year.
22. On December 19, 2016, Parent again spoke with the ED about continued inconsistency in Student receiving speech and language therapy sessions.

23. School was closed for the winter break from December 22, 2016 through January 2, 2017.
24. When school resumed on January 3, 2017, the School had contracted with Therapist #3 to provide speech and language therapy services. Therapist #3 replaced Therapist #2.
25. During the complaint investigation, the School provided progress notes documented by Therapist #2. A review of the progress notes from Therapist #2 reflect Student was receiving group and individual speech therapy sessions on Tuesdays and Thursdays for 30 minutes each session. The progress notes from Therapist #2 also reflect therapy sessions began on October 25, 2016, and were not provided on holidays when school was closed. The progress notes do not reflect any sessions that were missed.
26. However, attempts were made by the investigator to interview Therapist #2 to corroborate the accuracy of the progress notes. Therapist #2 was not available for interview, and the accuracy of the progress notes could not be confirmed.
27. Similarly, none of the School staff interviewed could confirm the accuracy of Therapist #2's progress notes based on first-hand knowledge.
28. Parent disputes that Student began receiving speech and language therapy services on the alleged start date of October 25, 2016 as reflected in Therapist #2's progress notes. Parent also disputes the consistency of the services provided to Student's on the dates recorded in Therapist #2's progress notes.
29. Parent provided Student's agenda book with notes reflecting some therapy sessions, but the accuracy of the notes could not be determined. A review of Student's agenda book reflects speech therapy was provided to Student only on November 1, 4, December 1, 6, 14 and 15, 2016 with handwritten notes marked as "speech" days by Student.
30. Paraprofessional reported Student's speech and language therapy services were given sporadically and not pursuant to a set schedule. Paraprofessional reported sessions became more regular once Therapist #3 began working with Student.
31. Before Parent filed this administrative complaint with the DDOE, the ED had already proposed a compensatory schedule to Parent by E-mail on December 9, 2016 to make up the speech and language therapy sessions Parent reported as missed.
32. During the complaint investigation, Therapist #3 provided the regular and compensatory schedule stating Student would be receiving 48 sessions between January 18, 2017 and May 25, 2017. Student would receive therapy services on Wednesdays and Thursdays for the regular twice weekly sessions with an additional session per week to make up sessions previously missed.

33. On January 20, 2017, the School held Student's annual IEP Team meeting and the new speech and language therapy schedule, to include compensatory sessions, was discussed with Parent and approved by Parent.

CONCLUSIONS

A. *Denial of FAPE and Failure to Provide Speech and Language Therapy Services Required by Student's IEP*

State and federal regulations implementing the IDEA require an IEP to include "the anticipated frequency, location, and duration" of related services to be provided to the student. *See*, 34 C.F.R. § 300.320(a)(4); 14 DE Admin Code § 925.20.1.7. It is undisputed Student requires speech and language therapy services in order to receive FAPE and benefit from specialized instruction. The related service page of Student's February 4, 2016 IEP clearly states speech therapy would be provided in a group 42 times per year for 30 minutes, and consultative 8 times per year for 15 minutes. Parent agreed with the frequency and duration of these services, but for the reasons stated, it is unclear whether these services were delivered to Student consistently from September to December 2016 as written in the IEP.

The centerpiece of the IDEA's delivery system for students with disabilities is the IEP. *See Honig v. DOE*, 484 U.S. 305, 311 (1988). As such, in order to satisfy the requirements of the IDEA, the instruction and services provided to the student *must* comport with the student's IEP. *Board of Education v. Rowley*, 458 U.S. 176, 188-89 (1982). In this case, Student's February 4, 2016 IEP provided the frequency and duration for the provision of speech and language therapy to Student that appears consistent with Therapist #2's progress notes for the period October 25, 2016 through December 2016. However, Parent disputes that Student began receiving therapy on October 25, 2016. Equally important, Therapist #2 was not available to interview to corroborate the accuracy of the progress notes. In addition, the School staff could not confirm the delivery of therapy services to Student based on the IEP from their first-hand knowledge. Similarly, the handwritten notations in Student's agenda book and Student's reports to Parent during this same time period contradict the occurrence of the sessions over the approximate four month period. In finding a denial of FAPE, I am further persuaded by the fact that Therapist #3 thought it imperative to make up previously missed sessions. The offer of compensatory therapy sessions supports the conclusion Student's IEP was not followed as written. ***Therefore, because the therapy services provided to Student failed to comport with Student's IEP, I find a denial of FAPE to Student.***

CORRECTIVE ACTION

To address the regulatory violations noted in this Decision, the DDOE directs the School to take the following corrective actions:

Student Level Corrective Actions

1. The School and Parent have agreed upon a compensatory plan and schedule to make up the speech and language therapy services that Student should have received consistently and according to the IEP for the period September 2016 through December 2016. However, this plan should be revised to include compensatory services from August 25, 2016 through January 20, 2017. The compensatory plan shall be submitted to the Director of Exceptional Children Resources on or before March 31, 2017.
2. On or before June 15, 2017, the School shall provide to the Director of Exceptional Children Resources written verification confirming Student's receipt of all speech and language therapy services required by the IEP, as well as compensatory speech and language services required by the compensatory plan. The School shall also provide a copy of the written verification to the Parent at the same time it is sent to the Director of Exceptional Children Resources. The School shall further provide to the Director of Exceptional Children Resources, on or before June 15, 2017, records that confirm Student's receipt of speech and language therapy services, which shall include, but need not be limited to, a list of dates and times that therapy was provided, whether it was on an individual, group, or consultative basis, and whether the therapy provided was therapy required by the IEP or therapy required by the compensatory plan, verified progress notes from the speech therapist, progress reports for Student's IEP goals related to speech and language, and any related records. Any records provided to the Director of Exceptional Children Resources to evidence the provision of speech and language services to Student must be verified in writing by the School's administration as an accurate representation and account of services provided.

School Level Corrective Actions

1. On or before April 3, 2017, the School shall provide a detailed corrective action plan to the Director of Exceptional Children Resources to address the regulatory violations identified in this decision.
 - a. The School shall develop a procedure for monitoring and oversight of related service personnel, including those contracted through outside agencies, in the provision of related services to students. An administrative position shall be identified, along with timelines and reliable record keeping, to ensure students are receiving the related services in the manner required by their IEPs and in compliance with regulations. Documentation shall be submitted to the Director of Exceptional Children Resources on or before March 31, 2017.

- b. The School shall further provide professional development to all related service staff in the School, or as contracted with outside agencies, to ensure compliance according to state and federal regulations with providing related services to students in accordance with their IEPs. A training agenda and any materials, including handouts and PowerPoints, that will be used in the training should be submitted to the Director of Exceptional Children Resources on or before March 31, 2017. The training should be completed and copies of training materials, agendas, and attendance rosters should be submitted to the Director of Exceptional Children Resources on or before June 15, 2017.

By:

Assigned Investigator